

### **REMARKS**

Claims 1-25 are pending in the present application. Claims 1, 7, 13, 18, 20, 21 and 25 are amended. Support for the amendments to the claims may be found at least on page 11, line 18 through page 13, line 12. Reconsideration of the claims is respectfully requested.

#### **I. Telephone Interview**

Applicants thank Examiner Dennis Ruhl for the courtesies extended to Applicants' representative during the January 10, 2005 telephone interview. During the interview, Applicants' representative discussed the distinctions between the present invention and the prior art of record. Examiner Ruhl stated that there appears to be distinctions between the amended claims and the *Cogen* reference, but further analysis would be required prior to making any decisions. The substance of the telephone interview is summarized in the following remarks.

#### **II. 35 U.S.C. § 102, Alleged Anticipation Based on *Cogen***

The Office Action rejects claims 1-3, 5-9, 11-14, 16-21 and 23-25 under 35 U.S.C. § 102(e) as being allegedly anticipated by *Cogen* (U.S. Patent Application Publication 2002/0138350 A1). This rejection is respectfully traversed.

As to independent claims 1, 13, 20 and 21, the Office Action states:

For claims 1, 5, 6, 8, 9, 11, 13, 16, 17, 19, 20, 21, 23, 24, *Cogen* discloses a method of ordering food using a wireless device. A location 20 is provided for the transmission of the order using the wireless device. This location is the claimed "hot spot". When the data is transmitted, it is then detected that a wireless device is present. The wireless device has transmitted the menu desired and the restaurant prepares that same menu. The wireless device is used to place the order. With respect to the limitation of "sending the menu" to the wireless device, this is done when the menu application 10 is located into the wireless device.

Office Action dated October 14, 2003, page 2.

Claim 1, which is representative of the other rejected independent claim 13, 20 and 21 with regard to similarly recited subject matter, reads as follows:

1. A method for ordering food from a restaurant, the method comprising:

providing a hot spot location for the restaurant, wherein the hot spot provides for wireless communications with a wireless device for a user; responsive to detecting the wireless device within the hot spot location, determining whether user preferences are stored within the wireless device; responsive to user preferences being present, dynamically generating a menu based on the user preferences, wherein the menu is customized by a server process associated with the restaurant; and sending the menu to the wireless device, wherein an order is placed through the wireless device using the menu. (emphasis added)

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that *Cogen* does not identically show every element of the claimed invention arranged as they are in the claims. Specifically, *Cogen* does not teach or suggest responsive to user preferences being present, dynamically generating a menu based on the user preferences, wherein the menu is customized by a server process associated with the restaurant.

*Cogen* is directed toward a system and method for transmitting stored user selections from a restaurant menu application on a handheld computer to a terminal at a drive-through lane or walk-up ordering area at a restaurant. Using the menu application on a handheld computer, a customer can record menu selections that the customer wishes to order during the next visit to a restaurant. These menu selections can be saved as a file in the memory on the handheld computer. When the customer arrives at the restaurant, the customer can select the file with the previously recorded menu selection and transmit the file to place an order. *Cogen* does not teach or suggest dynamically generating a menu based on user preferences. To the contrary, *Cogen* teaches that a menu application 10, comprising all "regular" menu items for at least one restaurant, is resident in the memory of a handheld computer. Further, *Cogen* does not teach or suggest responsive to user

preferences being present, dynamically generating a menu based on the user preferences, wherein the menu is customized by a server process associated with the restaurant, as recited in independent claims 1, 13, 20 and 21. As would be known to one skilled in the art, a server process is a process which provides a "service" to another device in the network, in this case, dynamically generating the menu.

Claims 1, 13, 20 and 21 of the present invention recite responsive to user preferences being present, dynamically generating a menu based on the user preferences, wherein the menu is customized by a server process associated with the restaurant. In other words, when user preferences are present in a wireless device that was detected within a hot spot location for a restaurant, a menu for the restaurant is dynamically generated based on those user preferences. The menu is customized by a server process associated with the restaurant. Therefore, the dynamically generated menu contains menu items offered by the restaurant based on the user preferences, for example, a customized menu listing only low-fat or low-carbohydrate menu items offered at the restaurant. *Cogen* does not teach or suggest this feature of dynamically generating a menu from a restaurant as recited in claims 1, 13, 20 and 21.

The following portion of *Cogen* describes *Cogen*'s menu application 10:

[0035] FIG. 1 shows one embodiment of the remote ordering system 2. A handheld computer 4 comprises a restaurant menu application 10 resident in memory 12. The menu application 10 comprises substantially the entire menu (e.g., all "regular" menu items that are not considered "specials" or available for a limited time) for at least one restaurant. The handheld computer 4 further comprises input means, such as a keyboard, pressure sensitive pad, stylus sensitive pad, touch screen, or microphone with voice recognition software. Using the input means, the user can record selections from a menu in menu application 10 and save them in a file in memory 12 on handheld computer 4. At any later time, the user can open stored files and edit them if the user wishes to make changes. When the user wishes to place an order at a restaurant using a drive-through lane, the user transports the handheld computer with him/her in an automobile, stops the automobile adjacent to drive-through station 20, and transmits (beams) a saved file comprising menu selections via order transmission 22. Receiver 40 on drive-through station 20 then receives the order transmission 22, comprising the menu selections. The menu selections are then transmitted, via communications link 50, to a terminal in restaurant 60, where the menu selections can be printed or displayed for restaurant employees, who can fulfill the order. It is understood that drive-through station 20 and/or terminal in restaurant 60 may comprise microprocessors and/or software to facilitate order transmission 22 and communications link 50, as are known and used in restaurants for transmitting

orders taken by a restaurant employee using a computerized cash register/order entry device. Such microprocessors and/or software particularly provide for the processing or formatting of data input by the restaurant employee into a form that may be printed or displayed for other restaurant employees charged with fulfillment of the order.

*Cogen*, paragraph [0035] (emphasis added).

*Cogen* only teaches that a menu is stored in a handheld computer so that a user can use the stored menu to create an order. *Cogen* does not teach or suggest responsive to user preferences being present, dynamically generating a menu based on the user preferences, wherein the menu is customized by a server process associated with the restaurant, as recited in independent claims 1, 13, 20 and 21.

In view of the above, Applicants respectfully submit that *Cogen* does not teach each and every feature of independent claims 1, 13, 20 and 21, as is required under 35 U.S.C § 102(c). At least by virtue of their dependency on claims 1, 13 and 21, respectively, *Cogen* does not teach each and every feature of dependent claims 2-3, 5-9, 11-12, 14, 16-19 and 23-25. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1-3, 5-9, 11-14, 16-21 and 23-25 under 35 U.S.C § 102(e).

In addition to the above, *Cogen* does not teach the specific features recited in dependent claims 2-3, 5-9, 11-12, 14, 16-19 and 23-25. With respect to claim 3, *Cogen* does not teach or suggest that the menu also is based on availability of items at the restaurant. As discussed above, *Cogen* teaches that menu application 10 contains all "regular" menu items that are not considered "specials" or available for a limited time for at least one restaurant. To the contrary, claim 3 recites that the dynamically generated menu is based on the availability of items at the restaurant. In other words, if the restaurant is out of a particular item, then that item is not included in the menu. In addition with respect to claim 3, "specials" and items available for a limited time are included in the dynamically generated menu if these items match the user preferences.

With respect to claims 7, 18 and 25, *Cogen* does not teach or suggest that responsive to user preferences not being present, entering into an electronic dialog between the server process associated with the restaurant and the user to place the order. As discussed previously, *Cogen*'s menu application 10 resides on the handheld computer.

*Cogen* does not mention an electronic dialog between a server process associated with the restaurant and the user.

With respect to claim 11, *Cogen* does not teach or suggest sending order information for use by a food analysis program on the wireless device. *Cogen* does not even mention this feature or a food analysis program.

With respect to claim 12, *Cogen* does not teach or suggest that the user preferences include at least one of dietary needs, language of choice for the menu, and monetary preferences. As stated previously, a menu in the presently claimed invention is dynamically generated based on user preferences. *Cogen* does not teach or suggest that menu application 10 is based on a user's dietary needs, language of choice for the menu, or monetary preferences.

Thus, in addition to being dependent on their respective independent claims 1, 13 and 21, dependent claims 2-3, 5-9, 11-12, 14, 16-19 and 23-25 are also distinguished over the *Cogen* reference based on the specific features recited therein.

### **III. 35 U.S.C. § 103, Alleged Obviousness Based on *Cogen***

The Office Action rejects claims 4, 10, 15 and 22 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Cogen* (U.S. Patent Application Publication 2002/0138350 A1). This rejection is respectfully traversed.

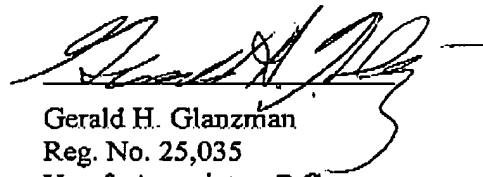
Since claims 4, 10, 15 and 22 depend from independent claims 1, 13 and 21, respectively, the same distinctions between *Cogen* and the invention recited in claims 1, 13 and 21, apply to dependent claims 4, 10, 15 and 22. Specifically, *Cogen* does not teach or suggest that responsive to user preferences being present, dynamically generating a menu based on the user preferences, wherein the menu is customized by a server process associated with the restaurant. In addition, claims 4, 10, 15 and 22 recite other features which, when taken in combination with claims 1, 13 and 21, are not taught or suggested by *Cogen*. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 4, 10, 15 and 22 under 35 U.S.C. § 103(a).

**IV. Conclusion**

It is respectfully urged that the subject application is patentable over *Cogen* and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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